

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ORTHOTEC, LLC,

Plaintiff,

v.

HOLMED CORPORATION,

Defendant.

Civil Action No.

04-cv-_____-RCL

**AFFIDAVIT OF MICHAEL R. NEWMAN, ESQ. IN OPPOSITION TO MOTION TO
COMPEL**

I, Michael R. Newman, depose and say:

1. I am a member of the bar of California. I am counsel of record to EuroSurgical, S.A. ("EuroSurgical") in *Orthotec, LLC v. EuroSurgical, S.A.*, United States District Court for the Central District of California, Case No. CV-03-8346-WJR (the "California federal action").

2. On November 29, 2004, I appeared before District Judge William J. Rea at a Scheduling Conference in the California federal action. During that conference, at which Orthotec LLC ("Orthotec") was represented by, Michael J. Perry, Esq., I requested Judge Rea to consider staying the California federal action because the issue of ownership of the intellectual property on which OrthoTec is claiming infringement, is presently on appeal in the state court of California. At that conference, Judge Rea ordered that defendants EuroSurgical and REO SpineLine are to file Motions to Stay, to be filed by January 10, 2005, with responses due from OrthoTec by January 18, 2005. A hearing on the Motions is set for January 24, 2005.

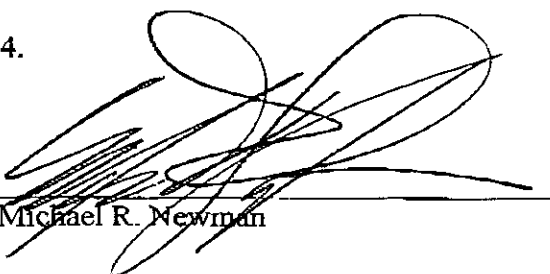
3. Judge Rea set no other deadlines or discovery schedule at that conference. Although Orthotec has served discovery in the California federal action, no response deadlines have been established.

4. I have reviewed Orthotec's motion papers in this Court. Michael J. Perry's Affidavit attaches as Exhibit 2 Orthotec's Complaint in the California federal action. Exhibit A to this Complaint is the Assignment Agreement on which Orthotec relies for its allegation of ownership of Eurosurgical's intellectual property. Mr. Perry's Exhibit 3 is the state court Judgment, paragraph 1 of which (on page 6) is a ruling that the Assignment Agreement provides ownership to Orthotec.

5. It is this state court Judgment that Eurosurgical has appealed. If the Judgment is reversed, the ownership of the intellectual property, which forms the basis for the California federal action, will not be in Orthotec. The foundation for Eurosurgical's argument that the California federal action should be stayed until the state court appeal is determined, is that it would be a waste of judicial time and effort and unreasonable expense to the parties to adjudicate the issues relating to infringement until the issue of who owns the intellectual property rights is determined by the California Court of Appeal. Furthermore, proceeding with the federal lawsuit while the appeal is pending in the state court could result in inconsistent and/or conflicting decisions.

6. I have agreed to inform Holmed's counsel, Mr. Hamilton, of any ruling by Judge Rea concerning the stay of the California federal action.

I declare under penalty of perjury that the foregoing statements are true and correct to my personal knowledge, this 14th day of December, 2004.



Michael R. Newman

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